

HOUSE No. 1318

By Ms. Balser of Newton, petition of Ruth B. Balser and others relative to accelerating the sealing of non-conviction criminal offender record information. The Judiciary.

The Commonwealth of Massachusetts

PETITION OF:

Ruth B. Balser
Byron Rushing
Patricia D. Jehlen
Ellen Story

Gloria L. Fox
Carl M. Sciortino, Jr.
Kay Khan

In the Year Two Thousand and Seven.

AN ACT ACCELERATING THE SEALING OF NONCONVICTION CRIMINAL OFFENDER RECORD INFORMATION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 SECTION 1. The General Court hereby finds and declares
- 2 that:—
 - 3 (1) The current system of maintaining and disseminating
 - 4 Criminal Offender Record Information (known as CORI) has
 - 5 become an all-but-impossible barrier for most ex-offenders and
 - 6 other individuals with CORI with respect to their securing
 - 7 employment, housing, education, training, credit and other neces-
 - 8 sities of mainstream society, so that they may become productive
 - 9 and tax-paying citizens or residents of the Commonwealth;
 - 10 (2) While the Commonwealth and the Federal Government
 - 11 spend millions of dollars to train and assist unemployed persons
 - 12 to enter the workforce, these efforts are unacceptably frustrated by
 - 13 the current CORI system, so that the Commonwealth is spending
 - 14 the taxpayers' money to fund governmental efforts which are
 - 15 often in contradiction to each other; and
 - 16 (3) In addition to the state interest in safeguarding the reputa-
 - 17 tions and privacy of the Commonwealth's residents, there is,
 - 18 collectively, a compelling state interest to seal stale or otherwise

19 unpredictable criminal records, which state interest may, in partic-
20 ular cases, be ruled by a judge to overcome what the federal
21 courts have found to be a First Amendment interest in favor of
22 keeping these governmental records available to the more than
23 ten thousand organizations which now have access to CORI.

1 SECTION 2. Within six months after this Act takes effect, the
2 clerk and the probation officers of each court with criminal juris-
3 diction shall seal their records of all non-conviction criminal cases
4 whose final dispositions were six years or more before the date on
5 which this law takes effect. As such records are sealed, the
6 probation officers of such courts shall notify the commissioner of
7 probation, who shall seal the appropriate case records in the
8 probation central file.

9 A “non-conviction criminal case,” as the term is used in this
10 and other sections of this Act, is one in which a no bill was
11 returned by the grand jury; or the defendant was found not guilty
12 by the court or jury; or a finding of no probable cause was made
13 by the court; or a nolle prosequi was entered; or a dismissal was
14 entered by the court, except where (whether or not such dismissal
15 was preceded by a continuance without a finding) such dismissal
16 was preceded by a term of active probation as to which the court
17 ordered the assignment of a probation officer to whom the
18 defendant was required periodically to report.

1 SECTION 3. Within the twelve months after this Act takes
2 effect the clerk of any court with criminal jurisdiction shall select
3 and process for prospective sealing, as nearly as possible in
4 chronological order by date of final disposition, appropriate
5 batches of non-conviction criminal cases in which the final
6 dispositions were less than six years before, but not more than six
7 months after, the date on which this law takes effect.

8 On at least a monthly basis, but more frequently if feasible, the
9 clerk shall prepare and post, in a prominent place in the court
10 house to which the public has access, a list of non-conviction
11 criminal cases which will be considered for sealing in one or more
12 sessions of the court on or after a stated date which is at least a
13 month after the list is posted. The list shall be organized in alpha-
14 betical order by last name of the individuals whose record or

15 records will be considered and shall contain each individual's full
16 name, the title of the crime or crimes charged and the date or dates
17 of their final disposition. The list shall also contain a fourth
18 column where any written objection to the sealing, stating a
19 reason or reasons and filed with the clerk's office at least two
20 weeks before the scheduled hearing date, may be briefly noted.

21 Each court is encouraged to issue a press release to local news-
22 papers generally received by or available to persons residing
23 within the jurisdiction of the court. Such release should announce
24 the forthcoming sealing session and describe in general terms the
25 notice posted in the court house and the range of final disposition
26 dates of the cases to be considered. The release should also
27 explain that anyone who objects to the sealing of a particular case
28 may file, at least two weeks before the session, a written objection
29 explaining the reason or reasons for the objection.

30 At each court session, in making its decision in each case, the
31 court shall consider (a) the facts and arguments presented by the
32 petitioner in favor of sealing, if any; (b) the facts and arguments
33 presented by an objector, if any, who timely filed an objection
34 with a reason or reasons for the objection relating to the interests
35 of public safety or in favor of the general public interest in access
36 to governmental records, as fostered by the First Amendment of
37 the U.S. Constitution; and (c) the findings and declaration of the
38 General Court as set forth in SECTION 1 of this Act.

39 If the court concludes that sealing the record would be in the
40 interests of substantial justice and that there is a compelling state
41 interest to seal the record which overcomes the general public
42 safety or public access interests, the court shall order that the clerk
43 and the probation officers in the courts in which the proceedings
44 occurred or were initiated seal the records of the proceedings in
45 their files and send notice thereof to the commissioner of proba-
46 tion, who shall seal the case record in the probation central file.

1 SECTION 4. Chapter 276 of the General Laws is hereby
2 amended by inserting after section 100C a new section as follows:
3 Section 100D. Notwithstanding, but in addition to, the provi-
4 sions of section 100C, on the first business day of each month the
5 clerk of each court having criminal jurisdiction shall have pre-
6 pared and shall post, in a prominent place in the court house to

7 which the public has access, a list of non-conviction criminal
8 cases which will be considered for sealing in one or more sessions
9 of the court on the first business day of the following month.

10 A “non-conviction criminal case,” as used in this section, is one
11 in which a no bill was returned by the grand jury, or the defendant
12 was found not guilty by the court or jury, or a finding of no
13 probable cause was made by the court, or a nolle prosequi was
14 entered, or a dismissal was entered by the court except where
15 (whether or not such dismissal was preceded by a continuance
16 without a finding) such dismissal was preceded by a term of
17 active probation as to which the court ordered the assignment of a
18 probation officer to whom the defendant was required periodically
19 to report.

20 The posted list shall be organized in alphabetical order by last
21 name of the individuals whose records will be considered and
22 contain each individual's full name, the title of the crime or crimes
23 charged and the date or dates of their final dispositions. The list
24 shall also contain a fourth column where any written objection to
25 the sealing, stating a reason and filed with the clerk's office at
26 least two weeks before the scheduled hearing date, may be briefly
27 noted.

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38 court shall consider (a) the facts and arguments presented by the
39 petitioner in favor of sealing, if any; (b) the facts and arguments
40 presented by an objector, if any, who timely filed an objection
41 with a reason or reasons for the objection relating to the interests
42 of public safety or in favor of the general public interest in access
43 to governmental records, as fostered by the First Amendment of
44 the U.S. Constitution; and (c) the findings and declaration of the
45 General Court as set forth in SECTION 1 of this Act.

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47 interests of substantial justice and that there is a compelling state
48 interest to seal the record which overcomes the general public
49 safety or public access interest, the court shall order that the clerk
50 and the probation officers in the courts in which the proceedings
51 occurred or were initiated seal the records of the proceedings in
52 their files and send notice thereof to the commissioner of proba-
53 tion, who shall seal the case record in the probation central file.

1 SECTION 5. Sections 1, 2, and 3 of this Act shall take effect
2 on the first business day of the month which is six months after
3 the Act is approved. Section 4 shall take effect on the first busi-
4 ness day of the month which is eighteen months after the Act is
5 approved.